



**DEPARTMENT OF THE ARMY
WILMINGTON DISTRICT, CORPS OF ENGINEERS**

P. O. BOX 1890
WILMINGTON, NORTH CAROLINA 28402-1890

IN REPLY REFER TO

October 6, 2006

Plan Formulation and Economics Section

Division of Purchase and Services
Attn: Kathy Norris
1605 Mail Service Center
Raleigh, North Carolina 27699-1605

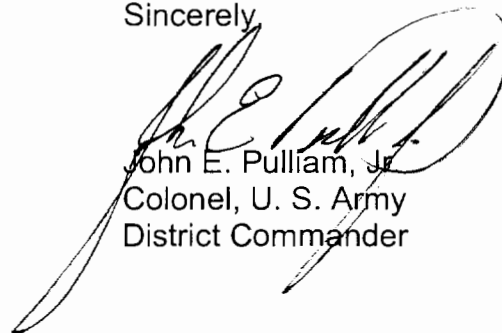
Dear Ms. Norris:

We greatly appreciate your response to our August 7, 2006, letter by providing us with the signed originals of the Letter of Agreement (LOA) for the State-Wide Aquatic Species Obstruction Removal Study. Enclosed is an executed original of the LOA. This work will be accomplished under the Section 22, Planning Assistance to States Program.

In accordance with the executed LOA, we are requesting the non-Federal share of the funds, which is \$50,000. We will not be able to utilize the Federal funds portion for the work, until the sponsor's funds are received and on deposit with the Federal Reserve Bank. We can accept the funds either by electronic transfer or check. If you choose to provide the funds by Electronic Funds Transfer, please contact Ms. Anita Bissette at (910) 251-4803 for the procedures. If you choose to provide the funds by check, please use overnight delivery to the attention of Mr. Ray Batchelor, Project Manager. As soon as sponsor funds are received we will begin work on the project.

We look forward to working with you in providing this product. Please contact us if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "John E. Pulliam, Jr.", is written over the typed name and title.

John E. Pulliam, Jr.
Colonel, U. S. Army
District Commander

Enclosure

PLANNING ASSISTANCE TO STATES PROGRAM

LETTER AGREEMENT
BETWEEN
THE STATE OF NORTH CAROLINA
AND
THE UNITED STATES OF AMERICA
FOR
STATE-WIDE AQUATIC SPECIES OBSTRUCTION REMOVAL

COPY

THIS AGREEMENT, entered into this 15th day of October, 2006, by and between the United States of America (hereinafter called the "Government"), represented by the District Engineer, U.S. Army Corps of Engineers, Wilmington District, executing this Agreement, and the State of North Carolina, (hereinafter called the "Sponsor").

WITNESSETH, THAT

WHEREAS, Section 22 of the Water Resources Development Act of 1974 (Public Law 93-251), as amended, authorizes the Secretary of the Army, acting through the Chief of Engineers, to assist the states in the preparation of comprehensive plans for the development, utilization, and conservation of water and related land resources; and

WHEREAS, Section 319 of the Water Resources Development Act of 1990 (Public Law 101-640) authorizes the Secretary of the Army to collect from non-Federal entities fees for the purpose of recovering fifty (50) percent of the cost of the program established by Section 22; and

WHEREAS, the State of North Carolina's Section 22 Coordinator has reviewed the State's comprehensive water plans and identified the need for planning assistance as described in the Scope of Work and Cost Estimate (Appendix A) incorporated into this Agreement; and

WHEREAS, the Sponsor has the authority and capability to furnish the cooperation hereinafter set forth and is willing to participate in the Study cost-sharing and financing in accordance with the terms of this Agreement;

NOW THEREFORE, the Parties agree to the following:

1. The Government, subject to the availability of funds, using funds contributed by the Sponsor and appropriated by the Congress, shall expeditiously prosecute and complete the work item shown in Appendix A, currently estimated to be completed in 18 months from the date of this Agreement, substantially in compliance with the Scope of Work and Cost Estimate attached as Appendix A and in conformity with applicable Federal laws and regulations.

2. Subject to the availability of funds, the Government and the Sponsor shall each contribute, in cash, fifty (50) percent of the cost of this work item, which is estimated to cost \$100,000, as specified in the cost estimate attached as Appendix A. The Government shall not obligate any cash contribution by the Sponsor toward study costs until such cash contributions have actually been made available to it by the Sponsor. At the time of signing this letter Agreement, the Sponsor agrees to provide checks totaling \$50,000, which shall be made payable to F & AO, USAED Wilmington.

3. No Federal grant funds may be used to meet the local Sponsors' share of study costs under this Agreement unless the expenditure of such funds is expressly authorized by statute as verified by the granting agency.

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4. The award and administration of any contract with a third party for services in furtherance of this Agreement which obligates Federal appropriations shall be exclusively within the control of the Government.

5. Before any Party to this Agreement may bring suit in any court concerning any issues relating to this Agreement, such Party must first seek in good faith to resolve the issue through negotiation or other form of nonbinding alternative dispute resolution mutually acceptable to the Parties.

6. This Agreement shall terminate at the completion of work items, provided that, prior to such time and upon thirty (30) days written notice, any party may terminate or suspend this Agreement without penalty.

7. Within ninety (90) days upon termination or suspension of this Agreement, the Government shall prepare a final accounting of the study costs, which shall display (1) cash contributions by the Federal Government, (2) cash contributions by the Sponsor, and (3) disbursements by the Government of all funds. Within thirty (30) days after the final accounting, the Government shall, subject to the availability of funds and at the request of the Sponsor, reimburse the Sponsor for non-Federal cash contributions that exceed the Sponsor's required share of the total study costs. Within thirty (30) days after the final accounting, the Sponsor shall provide the Government any cash contributions required to meet the Sponsor's required share of the total study costs.

8. In the event it appears that the total costs of the work subject to the Letter Agreement will exceed \$100,000, the Government will notify the Sponsor in writing. If additional Government and Sponsor funds cannot be obtained, the study will be terminated.

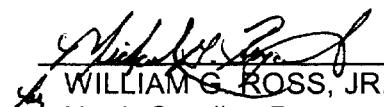
9. The Government and the Sponsor act in an independent capacity in the performance of their respective functions under this Agreement, and neither are to be considered the officer, agent, or employee of the other.

10. In the event that any (one or more) of the provisions of this Agreement is found to be invalid, illegal, or unenforceable, by a court of competent jurisdiction, the validity of the remaining provisions shall not in any way be affected or impaired and shall continue in effect until the Agreement is completed.

11. This Agreement shall become effective upon the signature of both Parties.

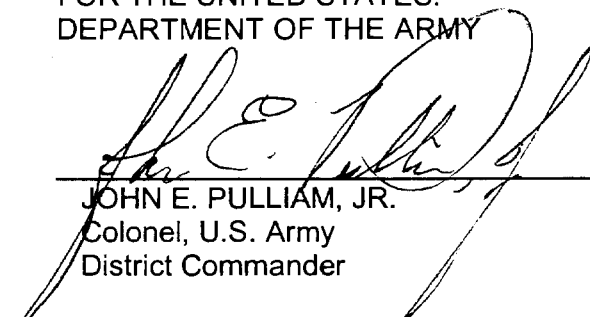
FOR THE STATE OF NORTH CAROLINA

Michael G. Bryant, Director
Division of Purchase & Services


WILLIAM G. ROSS, JR., Secretary
North Carolina Department of
Environment and Natural Resources

Date: 10/15/06

FOR THE UNITED STATES:
DEPARTMENT OF THE ARMY


JOHN E. PULLIAM, JR.
Colonel, U.S. Army
District Commander

Date: 15 OCT 06

APPENDIX A

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SECTION 22 STUDY

STATE-WIDE AQUATIC SPECIES OBSTRUCTION REMOVAL
SCOPE OF WORK AND COST ESTIMATE

1. Background and Purpose of the Study. The State of North Carolina is funding an effort to remove impedances to the movement of aquatic species. Reference the North Carolina Coastal Habitat Protection Plan dated February 2005 by NCDENR, Division of Marine Fisheries. This is to restore, to the most practicable extent possible, the habitat range and nursery/spawning area, in order to promote increased population, of aquatic species. The purpose of the study is to identify, catalog, and evaluate the effectiveness of the removal of obstructions to the movement of these aquatic species. This report will also prioritize the removal or modification of the obstructions in order to produce the most effective use of the funds expended on the removal of these obstructions.

2. Definition of Obstruction. The term obstruction as used in this scope of work means any object that will prevent or impede the movement of any aquatic species, either upstream or downstream. These are to include but not be limited to the following: dams, bridges, culverts, log jams, beaver dams or any other barriers that are not naturally occurring.

3. Study Elements. This study will consist of the following elements:

1. Collection and consolidation of all work or data that has been developed by Federal or State Agencies and private organizations.
2. Develop a format and criteria for a data base.
3. Develop criteria for evaluating each of the sites removal value.
4. Identify, catalogue and document other obstructions.
5. Evaluate and document each of the sites potential habitat contribution.
6. Evaluate and document the environmental impact of each of the sites removal.
7. Develop a geospatial database of all data collected or developed.
8. Prioritize removal of the sites based on removal value and environmental impact.
9. All activities will be coordinated with the sponsor.

4. Final Product. The final product will be a report that contains a map of the potential sites, a geospatial database containing the collected and developed data, and a prioritized listing indicating the suggested order of removal. The product will be delivered as two printed copies and an electronic copy on CD-Rom using MS Word, ESRI ARCMap, and MS Access.

It is currently estimated that this study can be accomplished in approximately 18 months at a total cost of \$100,000, or \$50,000 each for the Federal Government and non-Federal interests

5. Cost Estimate. The breakdown of costs by category is as indicated below. The cost breakdown by Federal Fiscal Year (FY) is as follows: FY06 \$18,000, FY07 \$60,000, FY08 \$22,000. The FY cost breakdown may be adjusted based on the actual funding received.

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<u>Item</u>	<u>Estimated Cost</u>
1. Collection of existing data	\$10,000
2. Develop list of potential obstruction sites	5,000
3. Collect physical data on potential sites	20,000
4. Develop geospatial database	5,000
5. Evaluate site habitat value	15,000
6. Evaluate site environmental value	15,000
7. Develop prioritized removal list	2,000
8. Prepare final report	<u>3,000</u>
SUBTOTAL	\$75,000
7. Contingency	10,000
8. Supervision and administration	<u>15,000</u>
TOTAL STUDY COST	\$100,000